

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:06-CR-195-BO  
No. 5:16-CV-325-BO

KENNETH EUGENE PORTER, )  
Petitioner, )  
v. )  
UNITED STATES OF AMERICA, )  
Respondent. )

ORDER

This cause comes before the Court on petitioner's *pro se* motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. [DE 103]. In July 2016, the Court stayed petitioner's motion pending the Fourth Circuit's decisions in *United States v. Walker*, No. 15-4301 (4th Cir. 2016), and *United States v. Simms*, No. 15-4640 (4th Cir. 2016). [DE 108]. The Court is now advised that petitioner died on July 10, 2018. [DE 109]. A petitioner who is deceased is no longer in "custody" within the meaning of 28 U.S.C. § 2255, and thus the statute cannot provide petitioner with relief. *See Krantz v. United States*, 224 F.3d 125, 127 (2d Cir. 2000). As such, petitioner's motion to vacate [DE 103] is hereby DISMISSED AS MOOT.

SO ORDERED, this 6 day of March, 2019.

  
TERRENCE W. BOYLE  
CHIEF UNITED STATES DISTRICT JUDGE